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No. 82-1966

In the Supreme Court of the United States

October Term, 1982

THE WILMINGTON MEDICAL CENTER, INC., and CRAWFORD H. GREENWALT, as Chairman of the Board of Trustees, and JOSEPH A. DALLAS, as Chairman of the Board of Directors,

Petitioners

v.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, PUERTO RICAN CIVIL RIGHTS LEAGUE, INC., OLDER AMERICANS COALITION, WILMINGTON UNITED NEIGHBORHOODS, BRANDYWINE TRINITY METHODIST CHURCH, on Behalf of Their Members and Others Similarly Situated, and RAYMOND W. BROWN, MARIA GALINDEZ, for Herself and as Parent and Guardian for Her Minor Children, Reynaldo Galindez and Pedro Galindez, MILAGRO QUINONES, DENISE SMOKES, on Behalf of Themselves and Others Similarly Situated; and CITY OF WILMINGTON, a Municipal Corporation,

Respondents

On Petition for a Writ of Certiorari to The United States Court of Appeals for the Third Circuit.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI ON BEHALF OF PENNSYLVANIA, ALABAMA, ALASKA, ARIZONA, ARKANSAS, CALIFORNIA, COLORADO, DELAWARE, FLORIDA, GEORGIA, HAWAII, IDAHO, ILLINOIS, INDIANA, KANSAS, LOUISIANA, MARYLAND, MASSACHUSETTS, MICHIGAN, MINNESOTA, MISSOURI, MONTANA, NEBRASKA, NEVADA, NEW HAMPSHIRE, NEW JERSEY, NORTH CAROLINA, NORTH DAKOTA, OHIO, OKLAHOMA, OREGON, RHODE ISLAND, SOUTH DAKOTA, TENNESSEE, UTAH, VERMONT, WASHINGTON, WEST VIRGINIA, WISCONSIN and WYOMING, AMICI CURIAE

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INTEREST OF AMICI CURIAE

The amici states, their officers and employees with increasing frequency are called upon to defend civil rights actions in which plaintiffs assert a variety of legal claims based on a plethora of legal theories. Claims for attorneys' fees emanating from those actions are likewise commonplace. Amici devote substantial time to their defense. Fee awards have significant impact on the public fisc.

This case requires the court to determine the proper standard for deciding who is the prevailing party in civil rights litigation in which judgment is entered against a plaintiff on all claims, but plaintiff is nonetheless marginally better off at its conclusion because of voluntary action taken by either a defendant or a nonparty. This determination goes to the heart of the meaning of prevailing party. Amici have a substantial interest in the resolution of this question and respectfully urge that the petition for a writ of certiorari be granted.

STATEMENT OF THE CASE

Amici incorporate the statement of the case set forth in the petition for a writ of certiorari. Amici emphasize two points in the statement. First, this case was decided against plaintiffs after a lengthy trial. Second, plaintiffs obtained none of the relief they sought—namely, a bar on the relocation of Wilmington Medical Center. To the contrary, the "Supplemental Agreement" upon which fees are predicated was roundly criticized by plaintiffs, prior to the fee aspects of this case, as inadequate and illegal[1]. As the District Court concluded:

> Plaintiffs never wavered through the remainder of this litigation in their contention that Plan Omega as modified by the Supplemental Agreement violated the discrimination statutes involved . . . . None of the relief sought originally or later was ever granted to plaintiffs.

NAACP v. Wilmington Medical Center, 530 Fed. Supp. 1018, 1026 (D. Del. 1981).

[1] It is also noteworthy that even that limited relief was obtained as a result of administrative proceedings which were commenced by a third party, HEW, over plaintiffs' objection, while the federal court proceeding was stayed.

ARGUMENT

I. This Petition Presents Important Public Questions

This Court has on several occasions in recent years considered the award of attorneys' fees under the Civil Rights Attorneys Fees Awards Act, 42 U.S.C. §1988 (hereinafter "Fee Act"). *Maher v. Gagne*, 448 U.S. 122 (1980), and *Hanrahan v. Hampton*, 446 U.S. 754 (1980), considered the application of the "prevailing party" requirement to consent decrees and awards *pendente lite*. *Hensley v. Eckerhart*, No. 81-1244 (argued Nov. 3, 1982), raises the question of what constitutes a reasonable fee in a civil rights suit in which plaintiffs succeeded on some but not all of their claims.[2] These cases reflect the important role attorneys' fees litigation has assumed in federal courts.

This case raises a related but distinct issue: the proper standard for determining who is the prevailing party in civil rights litigation in which plaintiff eventually loses entirely on the merits, but is marginally better off at the end of the litigation than before because of some voluntary action taken during the course of the lawsuit by either a defendant or some nonparty. Such cases are

[2] Attorneys' fees have also been at issue in *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54 (1980) (construing Title VII of the Civil Rights Act, 42 U.S.C. §2000(e)) and *White v. New Hampshire Department of Employment Security*, 102 S.Ct. 1162 (1982) (construing Rule 59(e), Fed. R. Civ. P.).

not uncommon.[3] The world does not stand still during litigation. Often civil rights defendants and others change their conduct during the course of civil rights litigation in ways that have a beneficial effect on civil rights plaintiffs. To award attorneys' fees every time plaintiffs benefit during the course of civil rights litigation would badly warp normal decision-making processes, providing a serious disincentive to otherwise desirable change. Yet, this is precisely the effect of the lower court's order.

The cost of attorneys' fees is obviously a great and growing concern. The "prevailing party" question has not been addressed by this Court outside the specialized circumstances of *Maher v. Gagne* and *Hanrahan v. Hampton. See Long v. Bonnes,* 455 U.S. 961 (1982) (Justices Rehnquist and O'Connor, dissenting). The determination of prevailing party status in the more common case is of great practical significance to amici. Amici respectfully suggest that this case presents the proper vehicle to resolve this issue.

II. The Decision Below Is Erroneous and in Conflict With Decisions in at Least Six Other Courts of Appeals

Under the Civil Rights Attorneys Fees Act, attorneys' fees are available only to "prevailing parties." 42 U.S.C. §1988; *Hanrahan v. Hampton,* supra. That they are available at all is a statutory exception to the "American

[3] Equally common are those cases in which plaintiffs obtain judgment, but only on an insubstantial claim, losing on all of the issues which form the heart of their case. Amici believe that the same rule should apply in those cases as in this: in order to be a prevailing party, a plaintiff must obtain significant relief as a result of the lawsuit. See pp. 6-7 infra.

Rule." *Id.* at 758. Under established principles, that exception is to be narrowly construed. *Andrus v. Glover Construction Co.*, 446 U.S. 608 (1980). *See also Alyeska Pipeline Co. v. Wilderness Society*, 421 U.S. 240 (1975). The court below has simply ignored these principles by awarding fees against defendants who, after lengthy trial, had judgment entered in their favor in every respect. That result, and the construction of the Fee Act that allowed it, "would have amazed the legislators who voted for it." *Runyon v. McCrary*, 427 U.S. 160, 189 (1976) (Stevens, J., concurring).

Under the Third Circuit's decision in this case[4], plaintiffs need "satisfy only two requirements" in order to secure attorneys' fees. 689 F.2d at 1171. They must obtain

> *some relief* on the merits of their claim and the circumstances under which the plaintiffs obtain that relief must be *causally linked* to the prosecution of the complaint.

Id. (emphasis supplied). The "some relief" standard is at variance with the proper construction of the Fee Act and the principles applied in other circuits. The requirement of a "causal link" is, on its face, reasonable. However, the "expansive definition" given it in the Third Circuit, 689 F.2d at 1169, places this requirement on the same improper footing.

The "some relief" standard is far too lax. It does not, as exemplified here, require plaintiffs to secure relief they deem important. Indeed, here plaintiffs strenuously

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[4] The decision was authored by Judge Gibbons. Judge Pollak, sitting by designation, concurred. Judge Hunter concurred and dissented.

attacked as illegal the very supplemental agreement upon which their claim to entitlement now rests. 689 F.2d at 1174-75. (Hunter, J., concurring and dissenting.)[5] Nor, is it apparently of any moment that judgment is eventually entered against plaintiffs.

Other circuits have applied far more stringent tests. In the Tenth Circuit, "the Court must determine whether the basic objectives plaintiff seeks from the lawsuit have been achieved or furthered in a significant way". *Chicano Police Officer's Ass'n v. Stover*, 624 F.2d 127, 131 (10th Cir. 1980). The "focus" in the Ninth Circuit "is whether plaintiffs prevail on the *central* issue of the litigation or acquire the primary relief they seek." *Besig v. Dophin Boating and Swimming Club*, 683 F.2d 1271, 1279 (9th Cir. 1982) (emphasis in original). The test in the Fifth Circuit has been formulated in almost those same words. *Iranian Students Assoc. v. Edwards*, 604 F.2d 352, 353 (5th Cir. 1979). Alternatively, a plaintiff must "substantially prevail" to receive fees, *Jones v. Diamond*, 594 F.2d 997, 1026 (5th Cir. 1979), or "prevail on the main issue." *Ramos v. Koebig*, 638 F.2d 838, 845 (5th Cir. 1981). The Eleventh Circuit requires a plaintiff to "achieve significant relief to which he was entitled under the civil rights laws. . . ." *Doe v. Busbee*, 684 F.2d 1375, 1381, (11th Cir. 1982). In *Bly v. McLeod*, 605 F.2d 134, 139 (4th Cir. 1979), the Fourth Circuit formulated the test differently yet: "the court should consider the precise factual/legal condition the fee claimant has sought to change and with that done and as a bench mark, the court

[5] Judge Hunter would have held "plaintiffs cannot now, solely for the purpose of obtaining attorneys' fees, claim benefits from an agreement which they have opposed from its inception." [Footnote omitted.] 689 F.2d at 1174.

should then consider whether the plaintiff fee claimant's efforts contribute in a *significant* way to the change" (emphasis supplied). Finally, the First Circuit requires plaintiff to have succeeded on a "significant issue." *Nadeau v. Helgemoe*, 581 F.2d 275, 279 (1st Cir. 1978).

Although these formulations all differ somewhat, they share a common thread: all focus on the totality of a case and the relief centrally at issue to determine who may fairly be considered to have won. Examination of this broad context is what distinguishes these holdings from the "some relief" standard of the Third Circuit.[6]

The second prong, that of causal connection, has also been improperly extended by the court of appeals. Specifically the Third Circuit held that the District Court "was bound to apply the *most expansive definition* of causation" in determining prevailing party status. 689 F.2d at 1169 (emphasis supplied). Why it should have done so is not explained.

Causation principles are typically at issue when plaintiffs, as here, have not secured a litigated judgment in their favor. In such a case, the fee award is premised on a finding that plaintiffs' lawsuit acted as a "catalyst" for the benefits secured. Amici do not necessarily dispute the propriety of a fee award on this basis in limited circumstances. They disagree, as do other circuits, with the expansiveness with which the Third Circuit has applied it.

That "expansiveness" is exemplified by its application to situations in which "some relief" is obtained from actions of nonparties or defendants against whom fees are

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[6] The Third Circuit, citing some of these very cases, incorrectly concluded that its rule was consistent with those in other circuits. 689 F.2d at 1167.

not sought[7]. In *Sullivan v. Pennsylvania Department of Labor and Industry*, 663 F.2d 443 (3d Cir. 1981) *cert. denied* 102 S.Ct. 1716 (1982), fees were awarded on the basis that a plaintiff's lawsuit prompted her union to take her case to arbitration. Here, the lawsuit at most was a catalyst to the actions of the Department of Health and Human Services, not to actions of the Medical Center.[8] Ironically, no fees were sought against the Department.

On this issue also, there is a clear conflict among the circuits. Specifically, the Fifth Circuit held in *Ward v. Dearman*, 626 F.2d 489 (5th Cir. 1980), that, under the catalyst theory, the actions relied upon must be taken by defendants, not strangers to the litigation. Moreover, the

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[7] The Third Circuit also misapplied the teachings of *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54 (1980). That case establishes that fees may be awarded in connection with administrative cases only when they are part of the required statutory process. The Third Circuit ignored the qualifying phrase and read it as sanctioning fees in administrative proceedings generally. 689 F.2d at 1172.

[8] Amici's reason for concern should be obvious. One could, with equal logic, award fees against state executive official defendants when the legislature has, during the pendency of litigation, statutorily provided some of the relief sought without any action by the defendants. For example, this Court upheld Pennsylvania mental health statutes in *Secretary of Public Welfare v. Institutionalized Juveniles*, 442 U.S. 640 (1979), and judgment was thereafter entered for defendants. Plaintiffs have nevertheless sought in excess of $100,000 in attorneys' fees, arguing both that they prevailed in the Court and that action by the Pennsylvania Legislature provided them some of the relief they sought. Plaintiff rely on the decision in this case. The motion is pending. Cf: *Coalition for Basic Human Needs v. King*, 691 F.2d 597 (1st Cir. 1982) (fees premised on acton of Massachusetts legislature in appropriating funds for public assistance program).

First Circuit would deny plaintiff fees on this theory if it has been judicially determined that defendants' conduct, however beneficial it may be to plaintiffs' interests is not required by law. *Nadeau v. Helgemoe*, 581 F.2d at 281. The Tenth Circuit likewise holds that a determination on the merits against plaintiff prevents an award of fees "regardless of any positive effect the lawsuit has." *Chicano Police Officer's*, supra, 624 F.2d at 131 n.5. *See Taylor v. Safeway Stores, Inc.*, 524 F.2d 263 (10th Cir. 1975). The Fourth Circuit, however, appears to join with the Third Circuit in applying a purely factual approach to this issue. *Bonnes v. Long*, 599 F.2d 1316 (4th Cir. 1979), *cert. denied* 455 U.S. 961 (1982). That approach has been critized by Justices Rehnquist and O'Connor, dissenting from the denial of certiorari in that case.

In fashioning its rules and sanctioning a fee award here, the Third Circuit has ignored the reality of civil rights actions. Often these cases raise multiple claims. *See Hensley v. Eckerhart*, supra. Many cases span the border between law and policy, seeking relief that may be desirable for policy reasons, but which is not required as a matter of law. In such cases, nonparties—Congress, a state legislature, or a federal agency—as well as parties may take action impacting on the issues at hand. Such actions are clearly desirable since policy does and should undergo constant change. As a result, however, plaintiffs may "succeed" on some limited aspect of their case and, therefore, according to the Third Circuit be entitled to attorneys' fees, even though their claims may have had no legal merit and they gained none of the relief they deemed important. Such a result cannot be appropriate.

Amici do not urge a construction of the Fee Act so narrow that the incentive of a fee award is no longer mean-

ingful. We do not seek to interdict the congressional goals underlying 42 U.S.C. §1988. We merely seek to redress an imbalance tilted far toward plaintiffs and substitute instead an evenhanded, common sense determination of who won or lost a lawsuit. Wilmington Medical Center, having prevailed after years of costly litigation, should not be required to bear plaintiffs' costs as well as its own.[9] A rule of law producing that result is seriously flawed. Amici respectfully request that certiorari be granted and thereafter the decision below be reversed.

CONCLUSION

The petition for a writ of certiorari should be granted. Thereafter, the decision below should be reversed and plaintiffs determined not to be "prevailing parties" for purposes of an award of attorneys' fees.

Respectfully submitted

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[9] Interestingly, Rule 54, Fed. R. Civ. P. would seemingly grant costs in their traditional sense to the defendant in this case.

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